

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1357 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

BABAR HAMIR KARSAN

Versus

V.K.MAVANI, P.S.I.

Appearance:

MR SURESH M SHAH for the Petitioner .

Respondent No. 1 served.

MR.S.A.PANDYA,ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 15/10/96

ORAL JUDGEMENT

The learned Judicial Magistrate, First Class, Una registered the complaint being Criminal Case No.67 of 1987 against the present rrespondent No.1, who at the relevant time, was P.S.I.Una Police Station, for the offences punishable under sections 504 and 506 of the Indian Penal Code and section 147 of the Bombay Police

Act and issued summons against him. Respondent No.1 submitted an application, Ex.8, stating, inter alia, that the incident in which he has been involved had taken place when he was on duty as PSI and, therefore, before lodging complaint against him, sanction under section 197 of the Criminal Procedure Code was required to be obtained and as no such previous sanction has been obtained, the complaint is liable to be rejected on that ground.

The learned Magistrate upheld the said contention and filed the complaint by his order dated 22-2-89. Against the said order, the petitioner, who is the private complainant, filed a revision being Criminal Revision Application No.45 of 1989 before the learned Sessions Judge, Jamnagar who, by his judgment and order dated 20-6-89, rejected it. The petitioner has, therefore, challenged the said order by way of this petition.

Reading the provisions of section 197 of the Code, it is amply clear that if the act complained of is directly concerned or reasonably as connected with the official duties and if the act complained of is so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under S.197 (1) would be necessary. It is not every offence committed by a public servant that requires sanction for prosecution under S.197 (1) Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly connected with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so irrespective of whether it was, in fact, a proper discharge of his duties because that would really be a matter of defence on the merits, which would have to be investigated at the trial and could not arise at the stage of the grant of sanction which must precede the institution of the prosecution (See: Sardar Karnalsingh Gill vs. State of Gujarat 1987 (2) G.L.H.232. In the instant case, a specific allegation of giving abuses has been made against respondent No.1. Giving abuses, under no stretch of imagination, be construed as an act in the discharge of the official duty of respondent No.1 and, therefore, no sanction under section 197 (1) of the Code was necessary. Assuming that respondent No.1 has a valid case, it is always open to apply for the discharge. However, without entering into the merits of the case, the order to file the complaint passed by the trial Court is illegal and erroneous on the

face of it and the same is requirede to be set aside.

In the result, this petition is allowed. The impugned orders dated 20-6-89 of the learned Sessions Judge, Jamnagar and the order dated 22-2-89 of the learned Judicial Magistrate, First Class, are quashed and set aside. The learned Judicial Magistrate, First Class, Una is directed to hear and decide the Criminal Case No.67 of 1987 in accordance with law as expeditiously as possible. Rule is made absolute accordingly with no order as to costs.

True copy